

March 18, 2010.

# HOUSE . . . . . No. 4571

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## The Commonwealth of Massachusetts

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Text of an amendment recommended by the committee on Ways and Means (House, No. 4567), as changed by the committee on Bills in the Third Reading and as amended by the House to the Senate Bill relative to bullying in schools. March 18, 2010.

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# The Commonwealth of Massachusetts

In the Year Two Thousand an Ten

Text of an amendment recommended by the committee on Ways and Means (House, No. 4567), as changed by the committee on Bills in the Third Reading and as amended by the House to the Senate Bill relative to bullying in schools:

By striking out all after the enacting clause and inserting in place thereof the following:—

1       SECTION 1. The third paragraph of section 1D of chapter 69 of the General Laws, as  
2 appearing in the 2008 Official Edition, is hereby amended by striking out the fourth sentence and  
3 inserting in place thereof the following sentence:- The standards may provide for instruction in  
4 the issues of nutrition, physical education, AIDS education, violence prevention, including teen  
5 dating violence, bullying prevention, conflict resolution and drug, alcohol and tobacco abuse  
6 prevention.

7       SECTION 2. The first paragraph of section 37H of chapter 71 of the General Laws, as so  
8 appearing, is hereby amended by inserting after the third sentence the following sentence:- The  
9 policies shall also prohibit bullying as defined in section 37O and shall include the student  
10 related sections of the bullying prevention and intervention plan required by said section 37O.

11       SECTION 2A. Designate the 4<sup>th</sup> Wednesday in January as ‘No Name Calling Day’ in the Commonwealth  
12 of Massachusetts. This day shall be set aside annually to educate the public as to the devastating effects  
13 of verbal bullying. Encouraging positive dialogue and pledging not to name call on this designated day  
14 reaffirms the commitment of the citizens of the Commonwealth to basic human rights and dignity while  
15 respecting differences and promoting tolerance.

16       SECTION 3. The third paragraph of said section 37H of said chapter 71, as so appearing, is  
17 hereby amended by inserting after the first sentence the following sentence:- The student

handbook shall include an age appropriate summary of the student related sections of the bullying prevention and intervention plan required by section 37O.

SECTION 4. Said chapter 71 is hereby further amended by inserting after section 37N the following section:-

Section 37O. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meaning:-

"Approved private day or residential school", a school, through agreement with a school committee, that accepts a child requiring special education pursuant to section 10 of chapter 71B.

"Bullying", the repeated use by a perpetrator of a written, verbal or electronic expression, or a physical act or gesture or any combination thereof, directed at a victim that: (i) causes physical or emotional harm to the victim or damage to the victim's property; (ii) places the victim in reasonable fear of harm to himself or of damage to his property; (iii) creates a hostile environment at school for the victim; (iv) infringes on the rights of the victim at school; or (v) materially and substantially disrupts the education process or the orderly operation of a school. For the purposes of this section, bullying shall include cyber bullying.

"Charter school", commonwealth charter schools and Horace Mann charter schools.

"Cyber bullying", bullying through the use of technology or any electronic communication, which shall include, but shall not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo electronic or photo optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications. Cyber-bullying shall also include creating or promoting a web page or blog in which the creator assumes the identity of another person and in which an individual(s) knowingly impersonates another person as the author of posted content or messages contained therein.

"Collaborative school", a school operated by an educational collaborative established pursuant to section 4E of chapter 40.

"Department", the department of elementary and secondary education.

“Hostile environment”, where bullying causes the school environment to be permeated with intimidation, ridicule or insult that is sufficiently severe or pervasive to alter the conditions of the student’s education.

“Plan”, a bullying prevention and invention plan established pursuant to subsection (d).

“Perpetrator”, a student or students who engage in bullying or retaliation.

“School district”, the school department of a city, town, regional school district or county agricultural school.

“School grounds”, property on which a school building or facility is located or property that is owned, leased or used by a school district, charter school, or an approved private day or residential school or collaborative school with whom a school committee has provided or arranged to provide alternative or special education services for a school-sponsored activity, function, program, instruction or training.

“Victim”, a student against whom bullying or retaliation has been perpetrated.

(b) Bullying shall be prohibited: (i) on school grounds, property immediately adjacent to school grounds, at a school sponsored or school related activity, function or program whether on or off school grounds, at a school bus stop, on a school bus or other vehicle owned, leased or used by a district or school, or through the use of technology or an electronic device owned, leased or used by a school district, charter school, or an approved private day or residential school or collaborative school with whom a school committee has provided or arranged to provide alternative or special education services; and (ii) at a location, activity, function or program that is not school-related, or through the use of technology or an electronic device that is not owned, leased or used by a district or school, if the bullying creates a hostile environment at school for the victim, infringes on the rights of the victim at school or materially and substantially disrupts the education process or the orderly operation of a school.

Retaliation against a person who reports bullying, provides information during an investigation of bullying, or witnesses or has reliable information about bullying shall be prohibited. Nothing contained herein shall require school districts to staff any non-school related activities, functions, or programs.

(c) Each school district, charter school, and approved private day or residential schools or collaborative schools with whom a school committee has provided or arranged to provide alternative or special education services shall provide age appropriate instruction on bullying prevention in each grade that is incorporated into the curriculum of the district or school. The curriculum shall be evidence based.

(d) Each school district, charter school, and approved private day or residential schools or collaborative schools with whom a school committee has provided or arranged to provide alternative or special education services shall develop, adhere and update a plan to address bullying prevention and intervention in consultation with teachers, school staff, professional support personnel, school volunteers, administrators, community representatives, local law enforcement agencies, students, parents and guardians and district attorney's office. The consultation shall include, but not be limited to, notice and a public comment period. The plan shall be updated at least biennially.

Each plan shall include, but not be limited to: (i) descriptions of and statements prohibiting bullying, cyber-bullying and retaliation; (ii) clear procedures for students, staff, parents, guardians and others to report bullying or retaliation; (iii) a provision that reports of bullying or retaliation may be made anonymously; provided, however, that no disciplinary action shall be taken against a student solely on the basis of an anonymous report; (iv) clear procedures for promptly responding to and investigating reports of bullying or retaliation; (v) the range of disciplinary actions that may be taken against a perpetrator for bullying or retaliation which balance the need for accountability with the need to teach appropriate behavior; (vi) clear procedures for restoring a sense of safety for a victim and assessing that student's needs for protection; (vii) strategies for protecting a person from bullying or retaliation who reports bullying, provides information during an investigation of bullying or witnesses or has reliable information about an act of bullying; (viii) procedures consistent with state and federal law for promptly notifying the parents or guardians of a victim and a perpetrator; provided, further, that the parents or guardians of a victim shall also be notified of the action taken to prevent any further acts of bullying; and provided, further, that procedures shall provide for immediate notification by the principal or person who holds a comparable role, pursuant to regulations promulgated under subsection (j), to the local law enforcement agency where criminal activity is involved and criminal charges may be pursued against the perpetrator; (ix) a provision that a student who

103 knowingly makes a false accusation of bullying shall be subject to disciplinary action; and (x) a  
104 strategy for providing counseling or referral to appropriate services for perpetrators and victims  
105 and for appropriate family members of said students. The bullying prevention and intervention plan  
106 shall afford all students the same protection regardless of their status under the law.

107 A school district, charter school, or an approved private day or residential school or collaborative  
108 school with whom a school committee has provided or arranged to provide alternative or special  
109 education services may establish separate discrimination or harassment policies that include  
110 categories of students. Nothing in this section shall prevent a school district, charter school, or an  
111 approved private day or residential school or collaborative school with whom a school committee has  
112 provided or arranged to provide alternative or special education services from remediating any  
113 discrimination or harassment based on a person's membership in a legally protected category  
114 under local, state or federal law.

115 The plan shall include ongoing professional development to build the skills of all  
116 members of school staff including, but not limited to, educators, administrators, school nurses,  
117 cafeteria workers, custodians, bus drivers and paraprofessionals, to prevent, identify and respond  
118 to bullying. The content of such professional development shall include, but not be limited to: (i)  
119 developmentally appropriate strategies to prevent bullying incidents; (ii) developmentally  
120 appropriate strategies for immediate, effective interventions to prevent bullying incidents; (iii)  
121 information regarding the complex interaction and power differential that can take place between  
122 the perpetrator, victim and witnesses to the bullying; (iv) research findings on bullying, including  
123 information about specific categories of students who have been shown to be particularly at risk  
124 for bullying in the school environment; (v) information on the incidence and nature of cyber  
125 bullying; and (vi) internet safety issues as they relate to cyber bullying. The department shall  
126 identify and offer information on alternative methods for fulfilling the professional development  
127 requirements of this section, at least 1 of which shall be available at no cost to school districts, charter  
128 schools, approved private day or residential schools and collaborative schools.

129 The plan shall include provisions for informing parents and guardians about the bullying  
130 prevention curriculum of the district or school and shall include, but not be limited to: (i) how

parents and guardians can reinforce the curriculum at home and support the district or school plan; (ii) the dynamics of bullying; and (iii) online safety and cyber-bullying.

(e)(1) Each school district, charter school, and approved private day or residential schools or collaborative schools with whom a school committee has provided or arranged to provide alternative or special education services shall provide to students and parents or guardians, in age appropriate terms and in the languages which are most prevalent among the students, parents or guardians, annual written notice of the relevant student related sections of the plan.

(2) Each school district, charter school, and approved private day or residential schools or collaborative schools with whom a school committee has provided or arranged to provide alternative or special education services shall provide to all school staff annual written notice of the plan. The faculty and staff at each school shall be trained annually on the plan applicable to the school. Relevant sections of the plan relating to the duties of faculty and staff shall be included in a district or school employee handbook.

(3) The plan shall be posted on the website of each school district, charter school, and approved private day or residential schools or collaborative schools with whom a school committee has provided or arranged to provide alternative or special education services.

(f) Each school principal or the person who holds a comparable position shall be responsible for the implementation and oversight of the plan at their school.

(g) If an incident of bullying or retaliation involves students from more than one school district, charter school, or an approved private day or residential school or collaborative school with whom a school committee has provided or arranged to provide alternative or special education services, the district or school first informed of the bullying or retaliation shall, consistent with state and federal law, promptly notify the appropriate administrator of the other district or school so that both may take appropriate action. If an incident of bullying or retaliation involves a former student no longer enrolled in a local school district, commonwealth charter school, approved private day or residential school or collaborative school, the district or school informed of the bullying or retaliation shall carry out its duties relative to the incident consistent with the provisions of clause (viii) of the second paragraph of subsection (d).

(h) Nothing in this section shall supersede or replace existing rights or remedies under any other general or special law, nor shall this section create a private right of action.

(i) The department, after consultation with the department of public health, the department of mental health, the attorney general and experts on bullying shall: (i) publish a model plan for school districts, charter schools, and approved private day or residential schools or collaborative schools with whom a school committee has provided or arranged to provide alternative or special education services to consider when creating their plans; and (ii) compile a list of bullying prevention and intervention resources, evidence based curricula, best practices and academic-based research that shall be made available to schools. Said model bullying prevention and intervention plan shall be consistent with and organized according to the schools and behavioral health framework developed by the department of elementary and secondary education in accordance with Section 19 of Chapter 321 of the acts of 2008. These resources may include, print, audio, video or digital media; subscription based online services; and on site or technology enabled professional development and training sessions. The department shall biennially update the model plan and the list of the resources, curricula, best practices and research and shall post them on its website.

(j) The department shall by September 30, 2010 promulgate rules and regulations necessary to carry out the purposes of this section; provided, further, that the regulations shall include requirements related to a principal's duties under clause (viii) of the second paragraph of subsection (d); provided, further, that the regulations shall include requirements and standards for staff members to report instances of bullying; provided further that such regulations shall require a member of a school staff, including but not limited to an educator, administrator, school nurse, cafeteria worker, custodian, bus driver and paraprofessional, to immediately report any instance of bullying or retaliation he has witnessed or become aware of to the school principal or to the school official identified in the bullying prevention and intervention plan as responsible for receiving such reports or both.

SECTION 5. Section 3 of chapter 71B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the word "proficiencies", in line 154, the following words:- ; the skills and proficiencies necessary to avoid and respond to bullying, harassment or teasing.

SECTION 5A. Section 43 of chapter 265 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by striking out subsection (a) and inserting in place thereof the following subsection:-



(a) Whoever (1) willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person which seriously alarms or annoys that person and would cause a reasonable person to suffer substantial emotional distress, and (2) makes a threat with the intent to place the person in imminent fear of death or bodily injury, shall be guilty of the crime of stalking and shall be punished by imprisonment in the state prison for not more than 5 years or by a fine of not more than \$1,000, or imprisonment in the house of correction for not more than 2 ½ years or both. Such conduct, acts or threats described in this subsection shall include, but not be limited to, conduct, acts or threats conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

SECTION 5B. Section 43A of said chapter 265, as so appearing, is hereby amended by striking out paragraph (a) and inserting in place thereof the following paragraph:-

(a) Whoever willfully and maliciously engages in a knowing pattern of conduct or series of acts over a period of time directed at a specific person, which seriously alarms that person and would cause a reasonable person to suffer substantial emotional distress, shall be guilty of the crime of criminal harassment and shall be punished by imprisonment in a house of correction for not more than 2 ½ years or by a fine of not more than \$1,000, or by both such fine and imprisonment. Such conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including, but not limited to, any device that transfers signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

SECTION 5C Section 13B of Chapter 268 of the General Laws is hereby amended by inserting in after the first sentence in subsection 3 the following paragraph:-

Such conduct or acts described in this paragraph shall include, but not be limited to, conduct or acts conducted by mail or by use of a telephonic or telecommunication device or electronic communication device including but not limited to any device that transfers signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-

electronic or photo-optical system, including, but not limited to, electronic mail, internet communications, instant messages or facsimile communications.

SECTION 5D. Chapter 269 of the General Laws is hereby amended by striking out section 14A and inserting in place thereof the following section:-

Section 14A. Whoever telephones another person or contacts another person by electronic communication, or causes a person to be telephoned or contacted by electronic communication, repeatedly, for the sole purpose of harassing, annoying or molesting the person or the person's family, whether or not conversation ensues, or whoever telephones or contacts a person repeatedly by electronic communication and uses indecent or obscene language to the person, shall be punished by a fine of not more than \$500 or by imprisonment for not more than 3 months, or both.

For purposes of this section, "electronic communication" shall include, but not be limited to, any transfer of signs, signals, writing, images, sounds, data or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photo-electronic or photo-optical system.

SECTION 5E. The sixth paragraph of section 3 of chapter 71B of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting after the third sentence the following sentence:-

Whenever the evaluation indicates that the child has a disability that affects social skills development, the Individual Education Program (IEP), the program shall address the skills and proficiencies needed to avoid and respond to bullying, harassment or teasing.

SECTION 6. School districts, charter schools, and approved private day or residential schools or collaborative schools with whom a school committee has provided or arranged to provide alternative or special education services shall establish a bullying prevention and intervention plan in compliance with this act and shall file the plan with the department of elementary and secondary education on or before December 31, 2010.

SECTION 7. The department of elementary and secondary education shall publish guidelines for the implementation of social and emotional learning curricula in kindergarten through grade 12 on or before June 30, 2011. The department of elementary and secondary school education shall also publish guidelines for the implementation of social emotional learning for afterschool sports programming. The guidelines shall be updated biennially. For purposes of this section, social and emotional learning shall mean the processes which children acquire the knowledge, attitudes and skills necessary to recognize and manage their emotions, demonstrate caring and concern for

others, establish positive relationships, make responsible decisions and constructively handle challenging social situations.

SECTION 8. The department of elementary and secondary education shall periodically review school district, charter school, and approved private day or residential schools or collaborative schools with whom a school committee has provided or arranged to provide alternative or special education services programs, activities and services to determine whether the school committees and schools are in compliance with this act.”.

SECTION 9. Chapter 71 of the General Laws, as most recently amended by chapter 27 of the acts of 2009, is hereby amended by inserting after section 91, the following new section: -

Section 92. Every public school providing computer access to students shall have a policy regarding internet safety measures and shall notify the parents or guardians of all students attending the school of the policy. Establishing the policy and any standards and rules enforcing the policy shall be prescribed by the school committee in conjunction with the superintendent or the board of trustees of a commonwealth charter school.

SECTION 10. The department of elementary and secondary education shall issue a report detailing cost effective ways to implement the professional development requirements in subsection (d) of section 70O of chapter 71 of the General Laws; provided, further, that the report shall: (i) include an option available at no cost to school districts, charter schools, approved private day or residential schools and collaborative schools, (ii) explore the feasibility of an option for a train the trainer model with demonstrated success and online professional development, and (iii) include any other options which may be cost effective; provided, further, that the report shall include a cost estimate for the professional development; and provided, further, that the report shall be provided to the clerks of the senate and house of representatives who shall forward the same to the chairs of the house and senate committees on ways and means and the house and senate chairs of the joint committee on education not later than August 31, 2010.

SECTION 11. The fourth paragraph of subsection (d) of section 70O of Chapter 71 of the General Laws shall take effect for the 2011-2012 academic year.